

APPEAL NO. 021852  
FILED SEPTEMBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 26, 2002. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and that he had disability as a result of his compensable injury from \_\_\_\_\_, through the date of the hearing. In its appeal, the appellant (carrier) asserts error in the period of disability found by the hearing officer. In his response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the determination that the claimant sustained a compensable injury and that determination has, therefore, become final.

DECISION

Reversed and rendered.

As noted above, the carrier only appealed the determination that the claimant had disability from \_\_\_\_\_, through the date of the hearing. Specifically, the carrier argues that the hearing officer erred in determining that the claimant had disability from May 24 to June 26, 2002, the date of the hearing. As the carrier noted in its appeal, during the claimant's cross-examination, evidence was elicited that the claimant returned to full-time work on May 24, 2002. Based upon that testimony, the claimant's attorney stated that he was "adjusting the alleged period of disability" and that the claimant was only claiming disability from \_\_\_\_\_ to May 23, 2002. The hearing officer noted the change in the issue for purposes of the record, and indeed, in his discussion, the hearing officer states that the claimant had disability, as a result of his compensable injury, from \_\_\_\_\_ to May 23, 2002. However, in Finding of Fact No. 3 and Conclusion of Law No. 4, the hearing officer states that the claimant had disability from \_\_\_\_\_, through the date of the hearing. The evidence in the record does not support a determination that the claimant had disability after May 23, 2002, almost certainly because the claimant, who had the burden of proof on the issue, decided to drop his claim for disability after May 23, 2002. Accordingly, we reverse the determination that the claimant had disability from \_\_\_\_\_ to June 26, 2002, and render a new determination that the claimant had disability from \_\_\_\_\_ to May 23, 2002.

The hearing officer's determination that the claimant had disability from \_\_\_\_\_ to June 26, 2002, is reversed and a new decision rendered that the claimant had disability from \_\_\_\_\_ to May 23, 2002.

The true corporate name of the insurance carrier is **FAIRMONT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**FRANK A. MONTEMARANO  
5205 NORTH O'CONNOR BOULEVARD  
IRVING, TEXAS 75039.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Judy L. S. Barnes  
Appeals Judge

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Susan M. Kelley  
Appeals Judge